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L&A 12-26971/JLS/SMA

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

US BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR THE BEAR STEARNS
ARM TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2005-10,

Plaintiff,

v.

SVEN MARTENSON, SUSAN
MARTENSON, AND JOHN DOE/JANE
DOE/OCCUPANT,

Defendants.

MOTION TO REMAND

Case No. 1:12-cv-00212-PMW

Magistrate Judge Paul M. Warner

Plaintiff US Bank National Association, as Trustee for Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-10 ("Plaintiff"), by and through counsel, respectfully moves this Court to issue an Order remanding this proceeding to the Second Judicial District Court of the State of Utah, in and for Weber County, Ogden Department. The grounds for this

motion are lack of subject matter jurisdiction because defendants have failed to carry their burden of demonstrating that this case presents a “federal question” or “arises under” the laws of the United States, or that diversity jurisdiction exists.

Plaintiff submits that this case was wrongfully removed for the purpose of further delaying the eviction proceedings and avoiding a pending state court occupancy hearing. In particular, defendants have intentionally removed a simple state court eviction matter so as to enable themselves to continue to reside in a property that has been owned by Plaintiff since June 8, 2012, the date of the foreclosure sale.

Accordingly, pursuant to 28 U.S.C. § 1447(c), Plaintiff respectfully submits that this case should be immediately remanded to state court, and all costs and attorney fees incurred by Plaintiff in connection with having to bring this Motion to Remand should be awarded to Plaintiff and against defendants.

DATED this 12th day of October, 2012.

Respectfully submitted,

/s/ Brigham J. Lundberg
Brigham J. Lundberg #12583
LUNDBERG & ASSOCIATES
*Attorneys for Plaintiff US Bank National Association,
as Trustee for Bear Stearns ARM Trust, Mortgage
Pass-Through Certificates, Series 2005-10*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2012, I caused a copy of the foregoing document to be served via ECF to the following:

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